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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION

Twelfth periodic report of States parties due in 1992

Addendum

ECUADOR*

[9 April 1992]

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1. Employment and pay indices
2. List of cultural institutions

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* For the tenth and eleventh periodic reports submitted by the Government of Ecuador and the summary records of the meetings at which such reports were considered, see:

Tenth periodic report - CERD/C/172/Add.4 (CERD/C/SR.868);
Eleventh periodic report - CERD/C/197/Add.9 (to be considered).

** Copies of the annexes, in Spanish, are available in the Secretariat for consultation by members of the Committee.

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I. GENERAL

1. Ecuador has, in various national and international forums, stated that its people and Government categorically reject all types of racial discrimination, and has steadfastly supported any initiative aimed at eliminating discrimination in all its forms.

2. Recognition of the fact that Ecuador is a multi-ethnic and multi-cultural society implies abandonment of the idea that it consists of a single culture. Ecuador has a variety of cultures, each of which contributes in its own particular way to the creation of a national identity. The State has been making efforts to achieve this aim. The 1989-1992 National Development Plan contains a number of objectives, strategies and plans of action aimed at strengthening Ecuador's national identity and ensuring recognition of its multi-ethnic and multi-cultural character.

3. Ecuadorian law includes various provisions aimed at prohibiting racial discrimination while seeking to ensure that human rights and fundamental freedoms are promoted and protected in various spheres of national life. These principles are embodied in Ecuador's Constitution and Penal Code - a subsidiary body of rules which, under Title II, devotes an entire chapter to the treatment of offences connected with racial discrimination.

4. Article 137 of the present Political Constitution provides:

> "The Constitution is the supreme law of the land. Secondary rules of law and others of inferior rank must maintain conformity with the provisions of the Constitution. Laws, decrees, ordinances, provisions and international treaties or agreements that are inconsistent with the Constitution or modify its provisions in any way shall be void."

5. Article 78 of the Constitution, which deals with the powers and duties of the President of the Republic, reads as follows in subparagraph (f):

> "To determine foreign policy and direct international relations; to enter into treaties and other international agreements, in accordance with the Constitution and the laws; to ratify them after their approval by the National Congress; to exchange or deposit ratifications."

6. Once an international convention has been signed, the National Congress has to proceed to approve or reject it. Thus, article 59 of the Constitution provides:

> "The National Congress shall meet in plenary session, without the need for convocation, in Quito on 10 August of each year, and shall remain in session for a period of 60 days that cannot be extended, to deal exclusively with the following matters:
>
> ...
>
> (h) To approve or reject public treaties and other international conventions."

7. After their approval by Congress, the President of the Republic is responsible for ratifying them and promulgating them in the Official Register, in accordance with the terms of article 5, paragraphs 1 and 2, of the Civil Code:

> "The law shall not become binding until it is promulgated by the President of the Republic and until after the necessary time has elapsed for it to come to public notice.
>
> The promulgation of the laws and decrees shall be made in the Official Register and, for legal purposes, the date of promulgation shall be the date of that Register."

8. Once the international agreements or conventions have been approved by the National Congress and ratified by the Executive, they become fully effective and may be invoked by individuals and applied by the competent judges, courts and administrative bodies.

9. It may also be noted that on 22 September 1966 Ecuador acceded to the International Convention on the Elimination of All Forms of Racial Discrimination.

10. Pursuant to general recommendation IV, approved by the Committee on the Elimination of Racial Discrimination on 16 August 1973, a leaflet was enclosed with the consolidated guidelines containing the final results of the fifth population census and fourth housing census. In that connection, it should be noted that Ecuador conducts a national population and housing census every eight years, the most recent having been carried out in November 1991. The body responsible for performing this task is the National Institute for Statistics and Censuses (INEC).

II. INFORMATION RELATING TO ARTICLES 2 TO 7 OF THE CONVENTION

Article 2

11. The Constitution and Penal Code contain provisions on the prohibition of activities aimed at inciting racial discrimination by groups or organizations that are racist in nature.

12. In more general terms, article 4 of the Constitution states that:

> "The Ecuadorian State condemns all forms of colonialism, neocolonialism and racial discrimination or segregation. It recognizes the right of peoples to free themselves from these oppressive systems."

13. The unnumbered third article in the chapter of the Penal Code relating to offences involving racial discrimination states:

> "Any organizations or any propaganda or publicity activities which promote or incite racial discrimination are hereby declared illegal and are therefore prohibited in the Republic. Consequently, any person participating in such organizations or activities shall be liable to imprisonment for not less than two months and not more than two years."

14. In addition, among the strategies designed to strengthen Ecuador's national identity and ensure recognition of its multi-ethnic and multi-cultural character, the National Development Plan:

> Guarantees to the indigenous nationalities the material conditions necessary for their continued existence and development, their participation in political life, the revival and strengthening of their culture and their access to a bilingual, intercultural education designed to strengthen the relationship between the country's various cultures.

Specific objectives are:

(a) To guarantee access to the resources and basic means of production that are necessary for the economic, social, cultural and political development of indigenous nationalities and other segments of the population;

(b) To foster and facilitate the organizational capacities of indigenous nationalities and other segments of the population in the interest of ensuring the future of democracy in Ecuador;

(c) To secure greater recognition for and overcome any remaining discrimination against manifestations of popular culture that contribute to the achievement of national identity and national unity, while respecting specific cultural, ethnic, social, local and regional features.

15. The main plans of action that will help to enhance the national identity entail:

(a) Support for strengthening the organization of the indigenous population;

(b) Rehabilitation of black culture;

(c) Support for literacy campaigns and the development of indigenous education;

(d) Support for the integrated management of the territories of the Huaorani, Cofán and Siona-Secoya indigenous communities;

(e) Drafting and implementation of the Plan for the Regulation and Development of the Awá Region.

16. Among the plans of action to be agreed upon, mention should be made of the delimitation and allocation of the territories of the indigenous communities of the Ecuadorian Amazonian region and the north-western Coast. The Ecuadorian Government has already recognized the title of 70 indigenous communities to land in the Amazonian and Coast areas - a total of 1,196,321.67 hectares, distributed among 3,159 families (see annex 2 to the eleventh report).

17. Basic information on a number of indigenous communities in Ecuador is presented below.

Quechua

18. The Quechuas account for most of the indigenous population in Ecuadorian Amazonia. They constitute a rapidly developing ethnic group that has spread as far as areas which, in former times, belonged to the Cofánes, Sionas-Secoyas and Huaoranis.

19. The Ecuadorian Institute for Agrarian Reform and Land Settlement (IERAC) has been working regularly to defend their possessions and to recognize title to their lands on the basis of traditional boundaries.

20. In the settlement areas there is a body called the Sucumbíos Federation of Indigenous Organizations (FOISE), which came into being in the wake of Quechua migrations from the province of Pastaza and the higher Napo region to the present province of Sucumbíos.

21. To date, title has been awarded to six communes. It has been proposed that an agreement centralizing the process of land allocation should be signed between FOISE and IERAC.

22. The following Quechua organizations should also be mentioned:

(a) The Federation-Union of Natives of Ecuadorian Amazonia (FCUNAE). This is the Quechua organization of the lower Napo, which has its headquarters in Coca (Puerto Francisco de Orellana). FCUNAE and IERAC signed an agreement to complete the task of fixing the boundaries of the lands belonging to the communities in question and to support the social and organizational development of those communities through training courses and workshops (see annex 3 to the eleventh report). Under this agreement it should also be possible to award land to all the Quechua communities of the lower Napo by 1992. In the past few years, land has been awarded to 17 FCUNAE communities;

(b) The Napo Indigenous Organizations Federation (FOIN). This is the Quechua organization of the upper Napo. It is based in the town of Tena. To date, title to two communes has been recognized;

(c) The Napo Indigenous Peasant Organizations Front (FOCIN). This is another Quechua organization based in Tena;

(d) The Pastaza Indigenous People's Organization (OPIP). This is a Quechua organization in the province of Pastaza. Its head office is in the town of Puyo. Titles of two communities have been recognized. It is the most developed of the Quechua indigenous organizations.

Cofán

23. The Cofánes live on the banks of the River Aguarico (upper reaches) in the province of Sucumbíos. Their territories are located in the forestry reserves or national parks which are managed by the Sub-Secretariat for Renewable Natural Resources, a part of the Ministry of Agriculture. They are represented by the Association of Cofán Indigenous Communities (ACOINCO).

24. The normal development of their cultural activities has been hampered by the fact that their communes are split up by land settlements. However, a number of non-governmental organizations, such as the Centre for Social Studies (CEDIME) and the Carmelite Mission, are currently engaged in social and organizational work within the community.

25. IERAC has recognized the title of 56 families to 2,378 hectares of the Cofán community of Duvouno. The titles of a further three communes have yet to be recognized, namely, Sinangue, in the upper Aguarico, whose lands are within the Cayambe-Coca ecological reserve; Shaninday in Bermejo; and Sabalo in the lower Aguarico, Cuyabeno.

26. Prior to 1990, IERAC made the following allocations to the Cofánes:

Cofánes of the Duvino: 3,863.80 hectares (allocated in 1978);

Cofánes of the Dureno: 9,571.60 hectares (allocated in 1978).

The total land area to which the title of the Cofánes has been recognized is 15,813.40 hectares.

Siona and Secoya

27. The Siona and Secoya live along the lower reaches of the River Aguarico in the province of Sucumbíos. They are represented by the Siona-Secoya Organization of Ecuador (OISSE). Title to all their territory (40,391.45 hectares) has been recognized.

28. The main objectives of an agreement concluded between IERAC and OISSE (see annex 4 to the eleventh report) are:

(a) To provide technical assistance in support of the livestock project that is currently under way. As its initial contribution, IERAC assigned a veterinary surgeon to the project;

(b) To organize training courses and workshops to promote the community's social and organizational process.

Effective use of the financial resources intended for OISSE has been ensured by continuing coordination between IERAC and those responsible for the "San Miguel de Putumayo" Project (PSP) and with the Environmental Protection Unit of Petroecuador.

Huaorani

29. The first allocation of land to the Huaorani people was made in April 1988 (66,570 hectares). Title to a further 612,560 hectares was recognized on 3 April 1990, for a total of 679,130 hectares. This is the largest community allocation made to date.

30. Since the recognition of title which took place in April 1990, IERAC's Indigenous Affairs Officer has been in constant contact with the Huaorani people and a number of national bodies with a view to completing the physical delimitation of Huaorani territory.

31. IERAC is cooperating with the Organization of the Huaorani Nationality of the Ecuadorian Amazon (ONHAE) on the physical delimitation and defence of its territory and in support of the community's social and organizational process. The Centre for Information on Tropical Forests (RIC) has also been associated with the implementation of these activities.

32. On 10 and 11 January 1991, a meeting was held in the town of Coca between IERAC, ONHAE, RIC and Petroecuador to formulate a plan of work for the current year. At the meeting it was agreed that:

(a) IERAC would provide topographic equipment for the delimitation of Huaorani territories;

(b) ONHAE would give its full support to the task of establishing boundaries, opening up paths, creating nurseries and sowing local plant species;

(c) RIC would provide advice on the establishment of nurseries and on sowing, as well as human and financial resources to that end; and

(d) IERAC-RIC would support the social and organizational process of the Huaorani people by providing communal premises for ONHAE and training for its members, and by establishing headquarters for the Huaorani organization.

33. The plan of work was based on the following:

1. Physical delimitation of Huaorani territory and a sociological study of adjacent settlements and indigenous communities and their possible influence on the Huaorani people; and

2. Support for the social and organizational process of the Huaoranis.

Shuar and Achuar

34. These communities form the Federation of Shuar-Achuar Centres. They are located both in Amazonia and on the Ecuadorian Coast, and their organizational capacity is superior to that of all the communities previously mentioned.

35. IERAC has undertaken various activities in support of their social and organizational project. An agreement was signed for the establishment of boundaries at their centres (annex 5 to the eleventh report) and seven bridges, six kilometres of local access roads to two Shuar centres in Palora and three schoolrooms were constructed, as follows:

Local road: 2.5 km - Morona, Palora, Paquisha Shuar Centre;

Local road: 3.5 km - Morona, Palora, Chupi-Chi Shuar Centre;

Schoolrooms: 3 in Morona;

Bridge: (60 m span) - Morona, over the river Tundaime;

Suspension bridge: (40 m span) - Morona, over the river Quimi;

Bridge: (10 m span) - Morona, Chorrera;

Suspension bridge: (82 m span) - Morona, over the river Zamora;

Footbridge: (61 m span) - Morona, over the river Cuyes;

Suspension bridge (covered): (20 m span) - Morona, river Yukutais;

Footbridge: (35 m span) - Morona, river Machinaza.

36. So far, 29 communities have benefited from the agreement on the establishment of boundaries for the Shuar-Achuar centres. The Shuar-Achuar Federation is also implementing a number of agricultural and livestock projects.

Chachi

37. These communities form the Federation of Chachi Centres, and live in the province of Esmeraldas. IERAC signed an agreement with the Chachi Federation on fixing the boundaries and legalizing all existing communities (annex 6 to the eleventh report). The Chachi communities share their lands with the communities of Río Santiago and Mono Bravo in Muisne. Support for their social and organizational process has been secured through an agreement signed between IERAC and the Chachi Federation for the construction of five schools, one medical post and two multi-purpose sports grounds (annex 7 to the eleventh report).

Awá

38. Title to the Awá lands has been recognized in the form of an ethnobiological reserve, 101,000 hectares in area. The Awá are among those who will benefit from the "Tobar Donoso" project being implemented in the north-western part of the province of Carchi. Their development is the responsibility of the Technical Unit of the Awá Plan (UTEPA), which is coordinated by the Ministry of External Relations.

Tsáchila

39. Title to all their land has been recognized, and IERAC is not at present involved in any project with this community.

40. Copies * of the main projects envisaged under the National Development Plan in support of the indigenous peoples are attached (annex 8 to the eleventh report).

41. With regard to the country's natural resources, all prospecting, exploration and exploitation is subject to two specific laws, namely, the law on hydrocarbons and the Agrarian Reform Act. These legal instruments contain

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* Copies of the annexes in Spanish are available in the Secretariat for consultation by members of the Committee.

provisions designed to ensure the rational use of the environment and to preserve the ecological balance through the prevention of environmental damage and the punishment of those responsible for such damage.

42. On 22 April 1990, the Ecuadorian Government adopted decision No. 04 declaring the 1990s to be the Decade of Ecological Development, and stating as its main principle:

> "The economic and social development of the country shall be planned, executed and evaluated according to environmental criteria so as to ensure sustainable development which does not destroy the environment and natural resources. Those responsible for any development project must pay particular attention to its likely impact on the environment."

43. With regard to activities involving hydrocarbons, it should be noted that all contracts between Petroecuador and the oil companies are subject to the relevant laws and regulations. Such contracts contain clauses guaranteeing environmental protection and establishing the responsibility of the companies in the event of environmental damage, thus ensuring respect for the country's flora and fauna and, of course, for the cultural values of the native populations in Ecuadorian Amazonia.

44. The Office of the Under-Secretary for the Environment in the Ministry of Energy and Mines, through its National Department, provides guidance for activities involving oil as they affect the environment. To that end, the following studies have been carried out: "Environmental Assessment of Activities Involving Oil in the Amazonian Region of Ecuador"; "Environmental Impact Study of the Shushufindi Field"; "The Trans-Ecuadorian Oil Pipeline and the Esmeraldas State Refinery and Their Respective Environmental Management Plans"; "Environmental Impact Study of the Payamino Field"; "Analysis and Evaluation of a Comprehensive Environmental Management Plan for Activities Involving Hydrocarbons"; "Review and Adoption of Environmental Diagnoses and Studies Submitted by the Oil Companies Operating in Ecuador"; and "Supervision and Monitoring of Environmental Measures in All Activities Involving Hydrocarbons".

45. Under article 2 of the Environmental Regulations issued by the National Environmental Department, oil companies must undertake an environmental diagnosis and submit an environmental management plan containing measures to minimize the adverse environmental impacts that could result from execution of their projects.

46. From the point of view of the ecological components, activities involving oil can be divided into two areas:

(a) Multiple-use areas, which have a combination of agricultural activities, settlements and activities involving oil, etc. These areas are not protected but are considered to be of value because of their biological density;

(b) Protected areas, in which national parks and other biological and other reserves are situated, such as the Yasuní National Park and the Cuyabeno and Limoncocha Reserves, which are important on account of their ecological value.

47. The oilfields with the highest production are worked by Texaco, a company which is part of the Petroecuador-Texaco consortium. It set up its activities without any environmental impact study, since such a study was not a requirement until 1985.

48. In the areas affected by oil exploitation, different kinds of impact have been recorded, and they have now been identified in an environmental impact study called the Comprehensive Environmental Management Plan (PIMA), which was undertaken for Petroecuador by the Essen-Ambientec companies and financed by the World Bank. The plan provides for measures starting in 1991 that will serve as a basis for future action.

49. The new human settlements in the Amazonian region of Ecuador have given rise to a number of demands and problems. Consequently, Petroecuador has made a series of contributions to community projects, including the Community Development Fund, which is designed to meet the needs of those settlements, both of indigenous peoples and of others, and to deal with the different kinds of impacts produced by activities involving hydrocarbons.

50. In addition, the Office of the Under-Secretary for the Environment in the Ministry of Energy and Mines is now coordinating a project for technical assistance and institutional improvement in the management of natural resources and the protection of the environment, in order to encourage environmental management by other institutions in their areas of competence. This will enable future development to be combined with environmental protection programmes in a harmonious and orderly manner.

Article 3

51. Ecuador has supported initiatives aimed at condemning all kinds of racially discriminatory practices on the part of the Government of South Africa. It has also supported requests that the Pretoria regime should continue its dialogue with the leaders of the black community and release political prisoners. Ecuador supports all measures aimed at the complete elimination of the system of racial discrimination.

52. It is to be noted that Ecuador maintains neither diplomatic nor consular relations with South Africa and provides no political, military, economic or other forms of assistance to the Pretoria regime.

53. On this subject please refer to Ecuador's comments regarding the measures taken against apartheid, in compliance with parts I and II of the International Labour Organisation's Declaration and Programme of Action against Apartheid in the Republic of South Africa, which was communicated to the United Nations.

Article 4

54. The unnumbered chapter of Title II of the Ecuadorian Penal Code concerning offences relating to racial discrimination applies the provisions of article 4 (a) and (b) of the Convention in stating:

> "Article ... A term of imprisonment of not less than six months and not more than three years shall be imposed on any person who:

1. Disseminates, by any means whatever, ideas based on racial superiority or racial hatred;

2. In any way incites racial discrimination;

3. Commits, or causes to be committed, acts of violence against any race, person or group of persons of any colour or ethnic origin; or

4. Finances, aids or abets any kind of racist activity.

If the offences described in this article are ordered or committed by public officials or employees, the penalty shall be imprisonment for not less than one year and not more than five years.

"Article ... If the acts of violence referred to in paragraph 3 of the preceding article result in bodily injury to any person, the persons committing the said acts shall be liable to imprisonment for not less than two years and not more than five years. If such acts result in the death of any person, the persons committing the acts shall be liable to rigorous imprisonment for not less than 12 years and not more than 16 years."

(The text of the unnumbered third article of this chapter has already been reproduced in connection with article 2, paragraph 1 (d), of the Convention.)

"Article ... No national, regional or local public authority or institution may promote or incite racial discrimination. Responsibility for the violation of this prohibition shall devolve upon the above-mentioned authority or the legal representatives or executive body of the institution in question, who shall be liable to imprisonment for not less than six months and not more than three years, together with the loss of political rights for the duration of the sentence.

"Article ... Public officials or employees who commit any of the racial discrimination offences specified in this Decree shall be subject to the special regulations set forth in the Constitution in respect of the violation of the guarantees enunciated therein."

Article 5

55. The right to equal treatment before the tribunals (article 5 (a) of the Convention) is guaranteed in the Constitution, article 19 of which states:

"Without prejudice to other rights necessary for the purpose of full moral and material development inherent in the nature of the individual, the State guarantees him:

...

5. Equality before the law. Any discrimination based on race, colour, sex, language, religion, political or any other affiliation, social origin or financial position or birth is prohibited.

...

17. Personal freedom and security. Accordingly:

...

(d) No person may be removed from the jurisdiction of the competent judge or judged by a court of special jurisdiction or special commission set up for the purpose, regardless of the name by which such bodies may be known."

56. Under Ecuadorian law, when cases are brought before the jurisdiction of a court it is for the judges, the higher courts or the Supreme Court to institute legal proceedings immediately upon presentation of charges or a private accusation, at the behest of a prosecutor, or upon their learning by any other means of the commission of an offence. With regard to this point, it should be noted that article 19, paragraph 1, of the Constitution refers to: "The inviolability of life and personal integrity ...".

57. With regard to political rights, the Political Constitution states the following:

"Article 12: Ecuadorians over 18 years of age are citizens.

"Article 32: Ecuadorian citizens shall enjoy the right to elect and be elected; to submit draft laws to the National Congress; to be consulted in the cases provided in the Constitution; to supervise the acts of the public authorities; and to hold public office or employment, under the conditions determined by the law.

"Article 33: Suffrage shall be universal, equal, direct and secret, compulsory for those who can read and write and optional for illiterates. Ecuadorian citizens who have reached the age of 18 and are in possession of their political rights are entitled to vote ...".

58. In application of the above constitutional provisions, the Elections Law specifies the mechanisms and procedures for the conduct of elections on the basis of two basic documents, namely, the identity and citizenship card and the electoral registers. In that connection, articles 5 and 10 of that Law state:

"Article 5: Any Ecuadorian man or woman aged 18 years or over who enjoys the rights of citizenship and who satisfies the requirements laid down in the present Law shall be entitled to vote. Eligibility to vote shall be demonstrated by presentation of the identity and citizenship card to the appropriate electoral board."

"Article 10: The Supreme Electoral Court shall prepare the electoral registers using complete data and any necessary reports provided by the Directorate-General of Civil Registry, Identity and Personal Documentation."

In preparing the electoral registers, only the forenames and surnames, dates of birth and addresses of citizens are used.

59. With regard to other civil rights, the following articles of the Constitution are relevant:

"Article 19: [... the State guarantees:]

"4. The right to freedom of opinion and to expression of thought by any means of social communication, without prejudice to the liability provided for by law."

"6. Freedom of conscience and religion, both individual and collective, in public or in private. Persons may freely practise the religion they profess, subject only to such limitations as are prescribed by the law to protect public safety, public morals or the fundamental rights of others."

"9. The right to travel freely throughout the national territory and to choose their place of residence. Ecuadorians shall enjoy the right to enter and leave Ecuador. Foreigners shall be subject to the provisions of the law."

"13. The right of association and of free assembly for peaceful purposes."

"Article 22 (3): Marriage is based on the free consent of the contracting parties and on the equality of rights, obligations and legal capacity of the spouses."

"Article 48: Property, in any of its forms, constitutes a right that is recognized and guaranteed by the State for the organization of its economy as long as it fulfils its social function. This social function should have the result of increasing and redistributing income in such a way as to enable the population as a whole to share the benefits of wealth and development."

60. The following constitutional provisions are of relevance with regard to the economic, social and cultural rights referred to in article 5 (e) of the Convention:

"Article 19: [... the State guarantees:]

"14. The right to a standard of living that provides the necessary health, food, clothing, housing, medical care and social services."

"16. The right to participate in the cultural life of the community."

"Article 29: All Ecuadorians have the right to social security, which includes:

"1. Social insurance, the purpose of which is to protect the insured and his family in cases of sickness, maternity, unemployment, disability, old age and death. It shall be financed by equitable contributions from the State, employers and insured persons. Efforts will be made to extend it to cover the entire population ...

"2. Health care for the population of urban and rural areas ...

"3. Social welfare, established and regulated by the State, in accordance with the law."

61. With regard to public health, the Ecuadorian Government has made resources available in its efforts to introduce a comprehensive health policy covering all inhabitants, without any discrimination, priority being accorded to those population groups at greatest risk by reason of their social and economic situation and biological vulnerability, especially children and mothers in rural areas and certain urban areas.

62. Health units or establishments provide care for all patients requiring their services. The various hospitals available are as follows:

1 hospital devoted to specialized fields in the Ecuadorian capital;

16 specialized (gynaeco-obstetric, paediatric, psychiatric, dermatological, etc.) hospitals;

22 hospitals located in provincial capitals, covering 4 basic specialized fields and a number of sub-specialities; and

86 cantonal hospitals, which are smaller in size and located in the cantonal capitals.

In all, there are 125 hospitals with a total of 8,804 beds.

In addition, out-patient units are distributed throughout the country as follows:

71 health centres in the main cities;

928 health sub-centres in the chief towns of parishes; and

251 health units in more remote areas.

These units provide health care for the rural population, including the indigenous population.

63. Article 31 of the Constitution states that:

"Work is a social right and a social duty. It enjoys the protection of the State ... and shall be regulated by the following basic principles: ...

(h) The right of workers to join a union and of employers to form an association, as well as its free exercise, without prior authorization, is guaranteed by law."

64. One of the Ecuadorian Government's main goals is to reduce the rates of unemployment and under-employment. In order to attain this goal, priority has been given to the establishment of a legal and institutional framework that

will foster the development of economic activities within a context of security and stability and make it possible to integrate all of the economically active persons for whom the sources of employment are at present out of reach.

65. With this in mind, the country has introduced a series of reforms with regard to the legal aspects of employer-worker relations, including the law concerning Sub-contracting, the Part-time Labour Law and the reform of the Labour Code, which it is hoped will facilitate the entry of at least 60,000 Ecuadorians into the labour market.

66. In addition, the Ministry of Labour and Human Resources, together with other national bodies, is responsible for carrying out a series of programmes, to create employment for persons who are unemployed or partially employed and whose level of income is below the general minimum living wage. Among the main programmes being executed mention should be made of the following:

(a) The Initial Employment and Social Development Programme, carried out by the National Employment Institute. Its aim is to create temporary employment by building up productive and social infrastructure in marginal urban and in rural areas. The programme is aimed at women heads of families and young people entering the labour market for the first time, because these are vulnerable groups of the population;

(b) The National Mini-businesses Programme, which is being carried out by the Mini-businesses Programme Implementation Unit (UNEPROM). The purpose of the programme is to generate self-employment in the informal sectors, both urban and rural. It is concerned with training future mini-businessmen in business management. After this phase of training has been completed, some of them are selected for a line of credit which will enable them to purchase raw materials, equipment and tools. Follow-up action is taken on the credit allocated, in order to ensure that it is recovered and can be reallocated to those groups which did not benefit from it in the first place;

(c) The People's Training Programme carried out by the Ecuadorian Vocational Training Service (SECAP). The programme is designed to equip under-employed or unemployed persons with a technical skill;

(d) The Support Programme for the Handicraft Sector carried out by the Employment and Human Resources Department of the Ministry of Labour. It creates permanent employment in the handicraft sector. The programme provides the handicraft communities with the basic infrastructure they need to pursue their activities. It also provides them with training and machinery to improve their production techniques, while keeping intact the indigenous values of the country's handicrafts;

(e) The National Corporation in Support of the People's Economic Units under the Ministry of Social Welfare. This corporation aims at increasing the incomes, production, productivity and self-management capability of the people's units through technical and credit assistance. A national system of popular credit has been organized and operates on the basis of a modern conception of the State and the need for a genuine national consensus.

67. Attached as an annex*, is a publication of the National Institute of Statistics and Censuses (INEC), which contains the employment and pay indices from 1985 to 1989 (annex 1).

68. The National Development Plan contains guidelines and specific targets relating, among other things, to the fulfilment of social commitments, particularly in respect of those segments of society having basic and primary needs that must be satisfied in the areas of health, education and housing - in short the fulfilment of the legitimate needs of all segments of the Ecuadorian population who aspire to better living conditions. The allocation of resources to satisfy these basic needs is based on the principle that income should be redistributed among as much of the population as possible, priority being given to persons living in rural areas and certain urban areas.

69. Under article 44 of the Constitution:

> "The State guarantees all individuals subject to its jurisdiction, whether men or women, free and effective exercise and enjoyment of the civil, political, economic, social and cultural rights set forth in the declarations, covenants, conventions and other international instruments in force."

Article 6

70. On the question of effective remedies before competent national tribunals and the right to seek from such tribunals satisfaction or reparation in cases where a person has been the victim of discrimination, the Constitution states that:

> "Article 19 (j): Any person who considers that he has been illegally deprived of his freedom may avail himself of the remedy of habeas corpus, either personally or through another person, without need for a written order, before the Mayor or President of the Council - or his alternate - under whose jurisdiction he finds himself. The municipal authority shall immediately order that the petitioner should be brought before it and that the order for the deprivation of freedom should be produced. Its order shall be obeyed without question or excuse by those in charge of the social rehabilitation centre or place of detention.
>
> "Once informed of the background of the case, the Mayor or President of the Council shall order the immediate release of the petitioner if the latter was not brought before him, if the order was not produced, if the order failed to satisfy the legal requirements, if there had been a lack of due process or, lastly, if the reasons for the appeal were found to be justified. An official or employee who fails to comply with the order shall be immediately dismissed from his post or employment without more ado by the Mayor or President of the Council, who shall report the dismissal to the Comptroller's office and to the authority responsible for appointing a replacement.

"After releasing the detainee, the dismissed employee may appeal to the Administrative Court within eight days of receiving notification of his dismissal."

71. The Ecuadorian legislation on criminal procedure establishes the following remedies:

(a) Remedy of amparo (judicial habeas corpus)

72. Article 458 of the Code of Penal Procedure provides:

"Any accused person who is detained in violation of the provisions of the Ecuadorian Code of Penal Procedure may seek his release by applying to the judge senior to the one who ordered his detention.

"If the application is lodged with either the Supreme Court or a High Court, it shall be investigated by the President of the Court.

"Where the deprivation of freedom was ordered by a Governor, Assistant Governor, Commissioner of Police or political authority, the complaint shall be lodged with any of the criminal judges of the district in question.

"The application shall be submitted in writing.

"Immediately upon receiving the application, the investigating judge shall order the detainee to be brought before him in order to hear his declaration, which shall be entered in a record to be signed by the judge, the secretary and the petitioner, or by a witness on behalf of the petitioner if the latter is unable to sign. In addition to that declaration, the judge shall request all the information he deems necessary in order to form an opinion and ensure the legality of his decision and, within 48 hours, shall deliver his decision in the manner deemed by him to be lawful. His decision shall be entered in the above-mentioned record.

"If the deprivation of freedom is found to have been unlawful, the judge shall order the immediate release of the detainee. The authorities and persons responsible for the custody of the detainee shall obey his order without question.

"A judge who is found to have ordered the unlawful detention of an individual through malicious abuse of process shall be removed from office, to which end the higher judge who investigated the application or complaint to which the present article refers shall immediately advise the appointing authority or corporation of the dismissal, which must be effected peremptorily; should the person concerned fail to effect the dismissal he may be charged with contempt of authority.

"A higher judge who makes improper use of the power provided for under this article shall himself be removed from office.

"Dismissal shall also follow for any person responsible for the custody of the detainee who fails to comply with the release order referred to in the fifth paragraph of this article.

"The parties involved shall be entitled to bring a suit for damages against the criminal judges and judicial officers in the same cases in which such action is admissible in civil matters."

73. Article 459 of the Code of Penal Procedure states that:

"The parties shall be entitled to bring a suit for damages against the criminal judges and judicial officers in the same cases in which such action is admissible in civil matters."

(b) Remedy of appeal

74. Article 348 of the Code of Penal Procedure states that:

"The remedy of appeal may be invoked by any of the parties against any of the following decisions:

1. Order for a stay of proceedings or dismissal of proceedings;

2. Order for the opening of plenary proceedings;

3. Orders for inhibition and prescription which terminate proceedings;

4. Acquittals or convictions in cases which are heard according to special procedures; and

5. Judgements in cases for setlement and the payment of damages which are tried by criminal judges or courts."

(c) Remedy of annulment

75. Article 360 of the Code of Penal Procedure states:

"The remedy of annulment may be applied for in the following cases:

1. If the criminal judge or court has acted without being competent;

2. If the accused or the defence counsel appointed by the court has not been notified of the initiating order for the investigation of the crime or the accusation by a private person;

3. If the parties have not been notified of the appointment of experts, except in the cases where the law allows this omission;

4. If any of the parties has not been notified of the verdict;

5. If the criminal court has not been legally constituted;

6. If during the trial in the criminal court there has been any violation of the procedure established in the legislation on criminal procedure;

7. If notification of the meeting of the criminal court has not been given within the period prescribed by law;

8. If the members of the court include one or more persons who have been legally challenged;

9. If the judgement does not satisfy all the requirements specified by the law; and

10. If any proceeding laid down by the law was violated during the trial of the case."

(d) Remedy of judicial review with regard to the law

76. Article 373 of the Code provides that:

"An application may be made to the Supreme Court for the remedy of judicial review if the law was violated, in the judgement, either because it was explicitly infringed, or becaue it was applied incorrectly or interpreted wrongly."

(e) Remedy of judicial review with regard to the facts

77. Article 385 of the Code of Penal Procedure provides that:

"An application may be made to the Supreme Court of Justice for the review of any verdict of guilty in the following cases:

1. If the existence or identity is established of a person who was believed dead;

2. If an innocent person was convicted by mistake instead of the guilty person;

3. If there are simultaneously two guilty verdicts against different persons in respect of the same crime, which, being contradictory, show that one of them is necessarily wrong;

4. If the judgement was delivered on the basis of false documents or witnesses or of expert reports which are obviously malicious or erroneous;

5. If it has not been proved according to the law that the crime referred to in the judgement was in fact committed;

6. If a person has been sentenced to rigorous imprisonment when under the law he should only have been sentenced to ordinary imprisonment; and

7. If new evidence is brought that clearly proves that the person sentenced is not guilty of the crime imputed to him."

(f) Review of refusal of leave to appeal

78. Article 395 of the above-mentioned Code states that:

"An application for review of refusal of leave to appeal may be made when the criminal judge or court has rejected appeal applications that were duly made at the proper time and that are explicitly specified in the legislation relating to criminal procedure.

"This application shall be made to the judge of the court which rejected the correctly submitted appeal application within the three days following notification of the decision rejecting it.

"The application having been made, the judge or court shall, without further ado, remit the case to the Higher Court, which will allow or refuse leave to appeal".

79. Article 20 of the present Political Constitution provides that:

"The State and other bodies in the public sector shall be obliged to compensate individuals for any damage caused to them as a consequence of public services or of acts committed by their officials and employees in the performance of their duties.

"In such cases, the bodies in question shall have the right of recovery and shall make effective the responsibility of their employees who are found by a judge to have caused damage either wilfully or through gross negligence. The penal responsibility of such officials and employees shall be established by the competent judges."

80. Article 21 of the Constitution provides that:

"When a verdict of guilty has been changed or reversed on appeal for judicial review of the facts, the person who has suffered punishment as a result of that verdict shall be rehabilitated and compensated by the State in accordance with the law."

This constitutional provision is reflected in article 392 of the Code of Penal Procedure, which provides that:

"When the Supreme Court of Justice, allows the appeal for review of the facts and reverses or changes the sentence against which the appeal is made, the person who has been unjustly sentenced shall be entitled to compensation equivalent to twice the income earned according to his income tax statement for the year immediately preceding his deprivation of freedom and in proportion to the time during which he was imprisoned.

"If there was no income tax statement, the amount of the compensation shall be equal to double the minimum living wage for workers in general for the entire period that the person sentenced was deprived of his freedom."

81. Persons on whom an enforceable judgement has been imposed shall be liable for damages to the victim jointly and severally (Code of Penal Procedure, art. 329).

82. Article 93, paragraph 2 of the Political Constitution provides that:

> "Unjustifiable delay in the administration of justice shall be punishable by law and, in the event of repetition, shall be grounds for the removal of the judicial officer or judge, who, moreover, shall be liable for damages to the parties affected."

83. Furthermore, everyone enjoys the rights recognized by the agreements, covenants and conventions to which Ecuador is a party, and consequently, if a claim is made, may have recourse to any of the national courts or bodies: the National Congress, the Court of Constitutional Guarantees, the Jurisdictional Function, the municipalities; and to any of the competent international bodies; the Human Rights Committee, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, the Committee on the Elimination of Racial Discrimination and the Committee Against Torture.

Article 7

84. The provisions of the Constitution with regard to education, training and culture are as follows:

> "Article 27: Education is one of the State's primary responsibilities. State education is secular and free of charge at all levels.
>
> "Private education is guaranteed.
>
> "The right of parents to have their children educated as they see fit is recognized.
>
> "Education in Ecuador shall be inspired by principles of nationality, democracy, social justice, peace and the defence of human rights, and shall be open to all currents of universal thought.
>
> "Education in Ecuador shall have a moral, historical and social sense, and shall stimulate among pupils and students the development of the critical capacity necessary to understand fully the Ecuadorian reality, and to promote an authentic national culture, human solidarity and social and community action.
>
> "The State shall guarantee access to education for all inhabitants without any discrimination.
>
> "Academic freedoms and the freedom to teach are guaranteed.
>
> "Education at the primary level and during the initial grades of the intermediate level is compulsory. When given in State establishments, it shall be provided free of charge as a social service.

"In the education systems set up in areas where the population is predominantly indigenous, the principal language of education shall be either Quechua or that of the culture in question, Spanish being used as the language of intercultural communication.

"The State shall formulate and implement plans to eliminate illiteracy.

"The educational plans shall be directed at the comprehensive development of the individual and society ... ".

85. The various strategies included in the National Development Plan with a view to strengthening national identity in this area include the following:

(a) The democratization of cultural policy through participation by the widest segments of the population in its planning and implementation;

(b) The promotion of creativity in Ecuador's various cultural spheres through support for those engaged in cultural work and respect for their freedom of expression;

(c) The study and extensive dissemination of the country's rich cultural heritage, material and other, to be found at the local, regional and national levels;

(d) Inclusion in the national educational curriculum of subjects and activities that strengthen the country's cultural identity, foster awareness of social solidarity, encourage participation in national development and strengthen democratic awareness;

(e) Inclusion of the cultural dimension in the various aspects of development;

(f) Review and harmonization of existing cultural legislation in such a way as to facilitate the centralization of cultural policy and decentralization of its implementation;

(g) Rationalization and development of cultural education and training;

(h) Dissemination of cultural and academic works produced by Ecuadorian authors.

Specific Objectives

(a) To improve and promote Ecuador's cultural output through support for those engaged in cultural activities;

(b) To stimulate research on, training in, and dissemination of Ecuador's cultural heritage in the interest of national development through the formal educational system and a sustained public awareness campaign.

(c) To rationalize the institutional aspects of Ecuadorian culture with a view to optimizing resources and ensuring cultural development.

Action Plans

(a) To support the work of artists;

(b) To include appropriate cultural themes in education;

(c) To record and disseminate cultural expression;

(d) To make the Sub-Secretariat for Culture responsible for artistic and cultural education within the national educational system;

(e) To upgrade and increase the number of public libraries.

Action plans to be agreed upon

(a) Reform of the Law on Culture: The aim of this plan is to include representatives of private sector organizations in the National Council for Culture, so as to ensure that those active in social matters participate extensively in the formulation and implementation of cultural policy. The National Congress, the National Council for Culture, organizations of persons engaged in cultural work and the indigenous nationalities will contribute to this coordination;

(b) Use of media space for the large-scale dissemination of cultural programmes. The social agencies involved in this connection are the Secretariat for Social Communication and radio and television organizations.

86. A list of the institutions in Ecuador concerned with the development of national culture and traditions is attached (Annex 2)*.